

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA and  
STATE OF MARYLAND

Plaintiffs,

v.

BROWNING-FERRIS, INC., et al.

v.

AK STEEL CORPORATION, et al.

Defendants.

Civil Action No. \_\_\_\_\_

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**UNITED STATES OF AMERICA and  
STATE OF MARYLAND**

**Civil Action No.** \_\_\_\_\_

**Defendants.**

1 C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §  
2 9621(f)(1)(F), EPA notified the State of Maryland (the "State") on or about February 18, 2004 of  
3 negotiations with potentially responsible parties regarding the implementation of the remedial  
4 design and remedial action for the Site, and EPA has provided the State with an opportunity to  
5 participate in such negotiations and be a party to this Consent Decree.

6 D. The State of Maryland (the "State") has also filed a complaint against the defendants in  
7 this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42  
8 U.S.C. § 9607, and Title 7, Environment Article, Annotated Code of Maryland (1987).

9 E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1); EPA notified  
10 the National Oceanic and Atmospheric Administration and the United States Department of the  
11 Interior on or about January 31, 2003 of negotiations with potentially responsible parties  
12 regarding the release of hazardous substances that may have resulted in injury to the natural  
13 resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation  
14 of this Consent Decree.

15 F. The Settling Performing Defendants, as defined below, have contribution claims pursuant  
16 to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against the Settling Non-Performing  
17 Defendants, as defined below, which the Settling Non-Performing Defendants dispute.

18 G. Settling Performing Defendants, Settling Non-Performing Defendants, and the  
19 Plaintiffs, as defined below, wish to resolve the Plaintiffs' claims against the Settling Defendants,  
20 as defined below, as well as the Settling Performing Defendants' claims against the Settling Non-  
21 Performing Defendants, without litigation and without affecting or impairing any claims of any

1 Party against any person or entity other than as explicitly stated in this Consent Decree.

2 H. The Settling Performing Defendants and Settling Non-Performing Defendants have  
3 reached separate agreements under which the Settling Non-Performing Defendants will  
4 contribute approximately \$2 million to the Settling Performing Defendants toward the matters  
5 addressed in this settlement (the "Side Agreements").

6 I. The defendants that have entered into this Consent Decree ("Settling Defendants") do not  
7 admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the  
8 complaints, nor do they acknowledge that the release or threatened release of hazardous  
9 substance(s) at or from the Site has occurred or constitutes an imminent or substantial  
10 endangerment to the public health or welfare or the environment.

11 J. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the  
12 National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal  
13 Register on June 10, 1986, 51 Fed. Reg. 21054.

14 K. In response to a release or a substantial threat of a release of a hazardous substance(s) at  
15 or from the Site, several responsible parties commenced, in or around July 1993, a Remedial  
16 Investigation and Feasibility Study ("RI/FS") for Operable Unit No. 2 of the Site ("OU2")  
17 pursuant to 40 C.F.R. § 300.430.

18 L. The OU2 RI/FS was completed and accepted by EPA in or around July 2002.

19 M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the  
20 completion of the FS and of the proposed plan for remedial action on December 20, 2002, in a  
21 major local newspaper of general circulation. EPA provided an opportunity for written and oral

1 comments from the public on the proposed plan for remedial action. A copy of the transcript of  
2 the public meeting is available to the public as part of the administrative record upon which the  
3 Regional Administrator based the selection of the response action.

4 N. The decision by EPA on the remedial action to be implemented at the Site is embodied in  
5 a final Record of Decision ("ROD"), executed on September 30, 2003, on which the State has  
6 given its concurrence. The ROD includes a responsiveness summary to the public comments.  
7 Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

8 O. Based on the information presently available to EPA and the State, EPA and the State  
9 believe that the Work will be properly and promptly conducted by the Settling Performing  
10 Defendants if conducted in accordance with the requirements of this Consent Decree and its  
11 appendices.

12 P. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial  
13 Action selected by the ROD and the Work to be performed by the Settling Performing  
14 Defendants shall constitute a response action taken or ordered by the President.

15 Q. The Parties recognize, and the Court by entering this Consent Decree finds, that this  
16 Consent Decree has been negotiated by the Parties in good faith and implementation of this  
17 Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated  
18 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public  
19 interest.

20 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Performing Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Performing Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of

1 the Work required by this Consent Decree. Settling Performing Defendants shall nonetheless be  
2 responsible for ensuring that their contractors and subcontractors perform the Work contemplated  
3 herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant  
4 to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual  
5 relationship with the Settling Performing Defendants within the meaning of Section 107(b)(3) of  
6 CERCLA, 42 U.S.C. § 9607(b)(3).

#### 7 **IV. DEFINITIONS**

8 4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are  
9 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning  
10 assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in  
11 this Consent Decree or in the appendices attached hereto and incorporated hereunder, the  
12 following definitions shall apply:

13 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and  
14 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

15 “Consent Decree” shall mean this Decree and all appendices attached hereto (listed in  
16 Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall  
17 control.

18 “Day” shall mean a calendar day unless expressly stated to be a working day. “Working  
19 day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any  
20 period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,



1 or Federal holiday, the period shall run until the close of business of the next working day.

2 “Duly Authorized Representative” shall mean a person set forth or designated in accordance  
3 with the procedures set forth in 40 C.F.R. § 270.11(b).

4 “Effective date” shall be the effective date of this Consent Decree as provided in Section  
5 XXVII of this Consent Decree.

6 “EPA” shall mean the United States Environmental Protection Agency and any successor  
7 departments or agencies of the United States.

8 “Future Response Costs” shall mean all costs, including, but not limited to, direct and  
9 indirect costs, that the United States and/or the State incur in reviewing or developing plans,  
10 reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise  
11 implementing, overseeing, or enforcing this Consent Decree, including, but not limited to,  
12 payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to  
13 Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to  
14 secure access and/or to secure or implement institutional controls including, but not limited to,  
15 the amount of just compensation), XV, and Paragraph 87 of Section XXI. Future Response  
16 Costs shall also include all Interim Response Costs.

17 “Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid  
18 by the United States in connection with the Site between January 11, 2005 and the Effective  
19 Date, or (b) incurred prior to the Effective Date but paid after that date.

20 “Interest” shall mean interest at the rate specified for interest on investments of the  
21 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on

1 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest  
2 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change  
3 on October 1 of each year.

4 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous  
5 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42  
6 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

7 “Operation and Maintenance” or “O & M” shall mean all activities required to maintain the  
8 effectiveness of the Remedial Action as required under the Operation and Maintenance Plan  
9 approved or developed by EPA pursuant to this Consent Decree.

10 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic  
11 numeral or an upper case letter.

12 “Parties” shall mean the United States, the State of Maryland, and the Settling Defendants.

13 “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect  
14 costs, that the United States has paid at or in connection with the Site through January 11, 2005  
15 and which are identified in the summary of costs attached hereto as Appendix E, plus Interest on  
16 all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. “Past  
17 Response Costs” shall also include all costs paid by the State at or in connection with the Site  
18 through the Effective Date including, but not limited to, costs paid by the State and settled by  
19 prior agreements.

20 “Performance Standards” shall mean the cleanup standards and other measures of  
21 achievement of the goals of the Remedial Action, set forth on pages 37-41 of the ROD attached

1 hereto as Appendix A and those that are developed by the Settling Performing Defendants and  
2 approved by EPA during implementation of this Consent Decree.

3 “Plaintiffs” shall mean the United States and the State of Maryland.

4 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.  
5 (also known as the Resource Conservation and Recovery Act).

6 “Record of Decision” or “OU2 ROD” shall mean the EPA Record of Decision relating to the  
7 OU2 of the Site signed on September 30, 2003, by Director of the Hazardous Site Cleanup  
8 Division, EPA Region III, or his/her delegate, and all attachments thereto. The OU2 ROD is  
9 attached as Appendix A.

10 “Remedial Action” shall mean those activities, except for Remedial Design and Operation  
11 and Maintenance, to be undertaken by the Settling Performing Defendants to implement the OU2  
12 ROD, in accordance with the final Remedial Design and Remedial Action Work Plans and other  
13 plans approved by EPA.

14 “Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph  
15 11 of this Consent Decree and approved by EPA, and any amendments thereto.

16 “Remedial Design” shall mean those activities to be undertaken by the Settling Performing  
17 Defendants to develop the final plans and specifications for the Remedial Action pursuant to the  
18 Remedial Design Work Plan.

19 “Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 11  
20 of this Consent Decree and approved by EPA, and any amendments thereto.

21 “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

1 “Settling Defendants” shall mean those Parties identified in Appendix B (Settling Non-  
2 Performing Defendants) and Appendix C (Settling Performing Defendants). For purposes of  
3 Paragraph 82, “Settling Defendants” shall also include the Settling Defendants’ successors in  
4 interest, shareholders, and parent corporations, to the extent that these entities’ liability is alleged  
5 to be derived from the respective Settling Defendant’s CERCLA liability for the Site.

6 “Settling Non-Performing Defendants” shall mean the Parties identified in Appendix B.

7 “Settling Performing Defendants” shall mean the Parties identified in Appendix C.

8 “Site” shall mean the Kane and Lombard Superfund Site located at and near the intersection  
9 of Kane and Lombard Streets in Baltimore, Maryland, and depicted in the OU2 ROD.

10 “State” shall mean the State of Maryland.

11 “Supervising Contractor” shall mean the principal contractor retained by the Settling  
12 Performing Defendants to supervise and direct the implementation of the Work under this  
13 Consent Decree.

14 “United States” shall mean the United States of America.

15 “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of  
16 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42  
17 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C.  
18 § 6903(27); and (4) any “hazardous material” under COMAR 26.13.

19 “Work” shall mean all activities Settling Performing Defendants are required to perform  
20 under this Consent Decree, except those required by Section XXV (Retention of Records).

## V. GENERAL PROVISIONS

### 5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by and on behalf of the Settling Defendants, to reimburse certain response costs of the Plaintiffs, and to resolve certain claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

### 6. Commitments by Settling Performing Defendants

a Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the OU2 ROD, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Performing Defendants and approved by EPA pursuant to this Consent Decree. Settling Performing Defendants shall also reimburse the United States and the State for Future Response Costs as provided in this Consent Decree.

b The obligations of Settling Performing Defendants to finance and perform the Work and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Performing Defendants to implement the requirements of this Consent Decree, the remaining Settling Performing Defendants shall complete all such requirements.

c. In the event that any of the Settling Performing Defendants files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Defendant shall notify the United

1 States within three (3) days of such filing.

2 7. Compliance With Applicable Law

3 All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree  
4 shall be performed in accordance with the requirements of all applicable federal and state laws  
5 and regulations. Settling Performing Defendants must also comply with all applicable or  
6 relevant and appropriate requirements of all Federal and state environmental laws as set forth in  
7 the OU2 ROD. The activities conducted pursuant to this Consent Decree, if approved by EPA,  
8 shall be considered to be consistent with the NCP.

9 8. Permits

10 a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP,  
11 no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the  
12 areal extent of contamination or in very close proximity to the contamination and necessary for  
13 implementation of the Work). Where any portion of the Work that is not on-site requires a  
14 federal or state permit or approval, Settling Performing Defendants shall submit timely and  
15 complete applications and take all other actions necessary to obtain all such permits or approvals.

16 b. The Settling Performing Defendants may seek relief under the provisions of  
17 Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the  
18 Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

19 c. This Consent Decree is not, and shall not be construed to be, a permit issued  
20 pursuant to any federal or state statute or regulation.

1       9. Pre-Entry Obligations Under This Consent Decree. Settling Defendants' Consent Decree  
2 obligations scheduled to arise prior to the Effective Date of this Consent Decree shall be legally  
3 enforceable once this Consent Decree has been entered by the Court pursuant to Section XXVII  
4 (Effective Date), below. If applicable, payment of stipulated penalties for violation of pre-entry  
5 obligations may be demanded by the United States as provided in Section XX (Stipulated  
6 Penalties) of this Consent Decree upon the Effective Date of this Consent Decree. Such  
7 payments may be demanded for the entire period beginning on the pre-entry date on which the  
8 obligation should have been met to the date of actual compliance.

9       **VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS**

10       10. Selection of Contractors.

11       a. Supervising Contractor.

12               i. All aspects of the Work to be performed by Settling Performing  
13 Defendants pursuant to Sections VI (Performance of the Work by Settling Performing  
14 Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and  
15 XV (Emergency Response) of this Consent Decree shall be under the direction and supervision  
16 of the Supervising Contractor, the selection of which shall be subject to acceptance or  
17 disapproval by EPA after a reasonable opportunity for review and comment by the State. Within  
18 thirty (30) days after the lodging of this Consent Decree, Settling Performing Defendants shall  
19 notify EPA and the State in writing of the name, title, and qualifications of any contractor  
20 proposed to be the Supervising Contractor. With respect to any contractor proposed to be

1 Supervising Contractor, Settling Performing Defendants shall demonstrate that the proposed  
2 contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and  
3 Guidelines for Quality Systems for Environmental Data Collection and Environmental  
4 Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of  
5 the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in  
6 accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-  
7 01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a  
8 notice of disapproval or acceptance of the selection of such Supervising Contractor. If at any  
9 time thereafter, Settling Performing Defendants propose to change a Supervising Contractor,  
10 Settling Performing Defendants shall give such notice to EPA and the State and must obtain a  
11 notice of acceptance of such change from EPA, after a reasonable opportunity for review and  
12 comment by the State, before the new Supervising Contractor performs, directs, or supervises  
13 any Work under this Consent Decree.

14 ii. If EPA disapproves the selection of a proposed Supervising Contractor,  
15 EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall  
16 submit to EPA and the State the name of an alternate contractor, including the qualifications of  
17 such contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's  
18 notice. EPA will provide written notice of any disapproval of this alternate contractor. In the  
19 event EPA disapproves the Settling Performing Defendants' alternate contractor, Settling  
20 Performing Defendants shall submit to EPA and the State a list of at least three contractors,  
21 including the qualifications of each contractor, that would be acceptable to them within fifteen



(15) days of receipt of EPA's notice disapproving the alternate contractor. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor from that list and shall notify EPA and the State of the name of the contractor selected within fifteen (15) days of EPA's written notice.

iii. If EPA fails to provide written notice of its acceptance or disapproval as provided in this Paragraph and this failure prevents the Settling Performing Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Performing Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree.

b. Other Contractors and Subcontractors.

The Settling Performing Defendants shall submit to EPA and the State for acceptance by EPA the names and qualifications of any additional contractors and subcontractors they propose to use to satisfy any requirement of this Consent Decree before such contractor or subcontractor performs any Work. If EPA does not respond with a notice accepting or disapproving the proposal for additional contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling Performing Defendants' selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling Performing Defendants shall follow the procedures set forth in subparagraph a(ii), above, to select and obtain EPA acceptance for a substitute.

11. Remedial Design/Remedial Action.

a. Within sixty (60) days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 10, Settling Performing Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Remedial Design, except to the extent such persons have been disapproved by EPA. The Remedial Design Work Plan shall provide for design of the remedy set forth in the OU2 ROD and for achievement of the Performance Standards and other requirements set forth in the OU2 ROD and this Consent Decree. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling Performing Defendants shall also submit to EPA and the State, at the time the Remedial Design Work plan is submitted, a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

1. a Site Management Plan;
2. a Sampling and Analysis Plan, containing:
  - a. a Field Sampling Plan; and
  - b. a Quality Assurance Project Plan (QAPP);

- 1                   3.     a Remedial Design Contingency Plan;
- 2                   4.     Reserved.
- 3                   5.     plans and schedules for the preparation and submission of a
- 4                         Preliminary Design Submittal (the preliminary design begins with the
- 5                         initial design and ends with the completion of approximately 30% of
- 6                         the design effort) containing, at a minimum:
- 7                   a.     a Design Criteria Report, including:
- 8                         1.     project description;
- 9                         2.     design requirements and provisions;
- 10                        3.     preliminary process flow diagrams;
- 11                        4.     operation & maintenance requirements;
- 12                   b.     a Basis of Design Report, including:
- 13                        1.     justification of design assumptions;
- 14                        2.     a project delivery strategy;
- 15                        3.     remedial action permits plan for off-site permits;
- 16                        4.     preliminary easement/access requirements;
- 17                   c.     Preliminary Drawings and Specifications, including:
- 18                        1.     outline of general specifications;
- 19                        2.     preliminary schematics and drawings;
- 20                        3.     chemical and geotechnical data (including data from
- 21                                pre-design activities);

- d. a value engineering screen; and
  - e. preliminary Remedial Action schedule.
  - f. a preliminary Remedial Action contingency plan;
  - g. a preliminary Remedial Action Health and Safety Plan  
("HASP") for EPA acceptance;
  - h. a preliminary Remedial Action waste management plan; and
  - i. a preliminary Remedial Action Sampling and Analysis Plan.
6. Reserved.
7. plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments to the intermediate design, and, at a minimum, additionally include:
- a. a preliminary Operation & Maintenance Plan;
  - b. a preliminary Construction Quality Assurance Plan ("CQAP")  
(the CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project);
  - c. a preliminary Remedial Action decontamination plan;

- d. a draft final Remedial Action schedule;
  - e. a draft final Remedial Action contingency plan; and
  - f. a draft final Remedial Action HASP for EPA acceptance.
8. plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's comments to the pre-final design, and, at a minimum, additionally include:
- a. a final Remedial Action schedule;
  - b. a final Remedial Action contingency plan;
  - c. a final Remedial Action HASP for EPA acceptance;
  - d. a final Remedial Action waste management plan;
  - e. a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action decontamination plan;
  - f. a final Design Criteria Report;
  - g. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);
  - h. a final Basis of Design Report;
  - i. final Drawings and Specifications;

- j. a revised Operation & Maintenance Plan and a schedule for submission of the final Operation & Maintenance Plan;
  - k. a final Construction Quality Assurance Plan;
  - l. a final Remedial Action decontamination plan; and
  - m. a final project delivery strategy.
9. a Remedial Design schedule.
10. An Interim Remedial Action Report, to be submitted no later than ninety (90) days following the date EPA provides the Settling Performing Defendants with written notice that Settling Performing Defendants have completed construction of the Remedial Action, as described in "Close Out Procedures for National Priorities List Sites" (OSWER Directive No. 9320.2-09A-P (January 2000)).

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Performing Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Performing Defendants shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence further Remedial Design field activities at the Site

1 prior to approval of the Remedial Design Work Plan.

2 d. Upon approval, approval with conditions, or modification by EPA, as provided in  
3 Section XI (EPA Approval of Plans and Other Submissions), of all components of the final  
4 design submittal, the final design submittal shall serve as the Remedial Action Work Plan and  
5 shall be enforceable under this Consent Decree. The Settling Performing Defendants shall  
6 implement the activities required under the Remedial Action Work Plan in accordance with the  
7 schedules and methodologies contained therein.

8 e. The Settling Performing Defendants shall submit all plans, submittals, or other  
9 deliverables required under the Remedial Action Work Plan in accordance with the approved  
10 schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other  
11 Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work  
12 Plan, the Settling Performing Defendants shall not commence physical activities at the Site prior  
13 to the date for commencement set forth in the approved schedule in the Remedial Action Work  
14 Plan.

15 12. Resident Engineer. Following EPA approval, approval with conditions, or modification  
16 by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all  
17 components of the final design submittal, and prior to commencement of any on-Site Work under  
18 the Remedial Action Work Plan, the Settling Performing Defendants shall submit to EPA the  
19 name and qualifications of a Resident Engineer to be present at the Site during construction to  
20 ensure that the Work is performed in accordance with the approved Remedial Action Work Plan.  
21 The Resident Engineer shall be familiar with all aspects of the Remedial Design approved by

1 EPA. EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling  
2 Performing Defendants. In the event EPA disapproves the use of any proposed Resident  
3 Engineer, Settling Performing Defendants shall submit to EPA and the State a list of at least  
4 three replacements, including the qualifications of each, who would be acceptable to them within  
5 fifteen (15) days of receipt of EPA's notice. EPA will provide written notice of the names of any  
6 replacements whose use it would accept. Settling Performing Defendants may select any  
7 replacement from the EPA notice and shall notify EPA and the State of the name of the  
8 replacement selected within ten (10) days of EPA's written notice. Settling Performing  
9 Defendants shall ensure that the Resident Engineer performs on-Site inspections as necessary to  
10 ensure compliance with the approved Remedial Action Work Plan and that the results of such  
11 inspections are promptly provided to Settling Performing Defendants, EPA, and the State. The  
12 Resident Engineer may act as the QA Official.

13 13. The Settling Performing Defendants shall, subject to the provisions of this Consent  
14 Decree, continue to implement the Remedial Action and O & M until the Performance Standards  
15 are achieved and for so long thereafter as is otherwise required under this Consent Decree.

16 14. Modification of the Work.

17 a. If EPA determines that modification of the Work is necessary to achieve and  
18 maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy  
19 set forth in the OU2 ROD, EPA may (1) require that such modification be incorporated into the  
20 Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan,  
21 and/or any other plan relating to such Work, and/or (2) require that Settling Performing



1 Defendants submit a plan for EPA approval which incorporates such modification to the Work  
2 and implement such approved plan. Provided, however, that a modification may be required  
3 pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy  
4 selected in the OU2 ROD.

5 b. For the purposes of this Paragraph 14 and Paragraphs 50 and 51 only, the "scope  
6 of the remedy selected in the OU2 ROD" means:

- 7 1. tasks employing a technology or combination of technologies  
8 discussed in Section XII (Selected Remedy) of the OU2 ROD to  
9 achieve and maintain the objectives described in the OU2 ROD. The  
10 technologies discussed in Section XII of the OU2 ROD include  
11 enhanced reductive dechlorination and institutional controls  
12 (including the Soil Management Plan required by the OU2 ROD); and
- 13 2. tasks associated with monitoring of OU2 conditions and the  
14 effectiveness of the Remedial Action.

15 c. If Settling Performing Defendants object to any modification determined by EPA  
16 to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section  
17 XIX (Dispute Resolution), Paragraph 68 (record review). The Remedial Design Work Plan,  
18 Remedial Action Work Plan, Operation and Maintenance Plan, and/or related work plans shall be  
19 modified  
20 in accordance with final resolution of the dispute.

21 d. Settling Performing Defendants shall implement any work required by any  
22 modifications incorporated in the Remedial Design Work Plan, Remedial Action Work Plan,  
23 Operation and Maintenance Plan, and/or in work plans developed in accordance with this  
24 Paragraph.

1           e. Nothing in this Paragraph shall be construed to limit EPA's authority to require  
2 performance of further response actions as otherwise provided in this Consent Decree.

3           15. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the  
4 Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any  
5 kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will  
6 achieve the Performance Standards.

7           16. Settling Performing Defendants shall, prior to any off-Site shipment of Waste Material  
8 from the Site to an out-of-state waste management facility, provide written notification to the  
9 appropriate state environmental official in the receiving facility's state and to the EPA Project  
10 Coordinator of such shipment of Waste Material. However, this notification requirement shall  
11 not apply to any off-Site shipments when the total volume of all such shipments will not exceed  
12 ten (10) cubic yards.

13           a. The Settling Performing Defendants shall include in the written notification the  
14 following information, where available:

- 15               1. the name and location of the facility to which the Waste Material is to be  
16 shipped;
- 17               2. the type and quantity of the Waste Material to be shipped;
- 18               3. the expected schedule for the shipment of the Waste Material; and
- 19               4. the method of transportation.

20           The Settling Performing Defendants shall notify the state in which the planned receiving facility  
21 is located of major changes in the shipment plan, such as a decision to ship the Waste Material to

1 another facility within the same state, or to a facility in another state.

2           b. The identity of the receiving facility and state will be determined by the Settling  
3 Performing Defendants following the award of the contract for Remedial Action construction.  
4 The Settling Performing Defendants shall provide the information required by Paragraph 16.a as  
5 soon as practicable after the award of the contract but in no case less than seven (7) days before  
6 the Waste Material is actually shipped.

7           c. Before shipping any hazardous substances, pollutants, or contaminants from the  
8 Site to an off-site location, Settling Performing Defendants shall obtain EPA's certification that  
9 the proposed receiving facility is operating in compliance with the requirements of Section  
10 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Settling Performing Defendants shall only send  
11 hazardous substances, pollutants, or contaminants from the Site to an off-site facility that  
12 complies with the requirements of the statutory provision and regulations cited in the preceding  
13 sentence.

## 14 15 **VII. REMEDY REVIEW**

16       17. Periodic Review. Settling Performing Defendants shall conduct any studies and  
17 investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the  
18 Remedial Action is protective of human health and the environment, at least every five (5) years  
19 as required by Section 121(c) of CERCLA and any applicable regulations.

20       18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the  
21 Remedial Action is not protective of human health and the environment, EPA may select further

response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Performing Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Performing Defendants' Obligation To Perform Further Response Actions.

a. Settling Performing Defendants shall undertake such further response actions, with respect to Operable Unit 2, which EPA has determined are appropriate if (1) conditions at the Site, previously unknown to EPA are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part; and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment. If EPA requires Settling Performing Defendants to undertake such further actions pursuant to this Paragraph, Settling Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determinations under the first sentence of Paragraph 20.a, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (record review).

b. For purposes of Paragraph 20.a., the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree.

21. Submissions of Plans. If Settling Performing Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Performing Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

#### **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

22. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Performing Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)"(EPA 240 B-01 003, March 2001); "EPA NEIC Policies and Procedures Manual," (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data Validation," (EPA Region III: September 1994); "Data Quality Objectives Process for Superfund," (EPA 540/R-93/071: September 1994); and subsequent

1 amendments to such guidelines upon notification by EPA to Settling Performing Defendants of  
2 such amendment. Amended guidelines shall apply only to procedures conducted after such  
3 notification. Prior to the commencement of any monitoring project under this Consent Decree,  
4 Settling Performing Defendants shall submit to EPA for approval, after a reasonable opportunity  
5 for review and comment by the State, a Quality Assurance Project Plan ("QAPP") for the Work  
6 that is consistent with the NCP and the guidance documents cited above. If relevant to the  
7 proceeding, the Parties agree that validated sampling data generated in accordance with the  
8 QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection,  
9 in any proceeding under this Decree. Settling Performing Defendants shall ensure that EPA and  
10 State personnel and their authorized representatives are allowed access at reasonable times to all  
11 laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In  
12 addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all  
13 samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling  
14 Performing Defendants shall ensure that the laboratories they utilize for the analysis of samples  
15 taken pursuant to this Decree perform all analyses according to accepted EPA methods. Settling  
16 Performing Defendants shall submit to EPA the selected laboratory's(ies') Quality Assurance  
17 Program Plan and their qualifications, which shall include, at a minimum, previous certifications,  
18 Performance Evaluation (PE) results, equipment lists and personnel resumes. Settling  
19 Performing Defendants shall ensure that all field methodologies utilized in collecting samples for  
20 subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures  
21 set forth in the QAPP approved by EPA. At the request of EPA, Settling Performing Defendants

1 shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and  
2 compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory(ies)  
3 is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted  
4 according to procedures available from the QA Branch. Audit reports shall be submitted to the  
5 EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling  
6 Performing Defendants shall report serious deficiencies, including all those which adversely  
7 impact data quality, reliability or accuracy, and take action to correct such deficiencies within  
8 twenty-four (24) hours of the time the Settling Performing Defendants knew or should have  
9 known of the deficiency.

10 23. Upon request, the Settling Performing Defendants shall allow split or duplicate samples  
11 to be taken by EPA and the State or their authorized representatives. Settling Performing  
12 Defendants shall notify EPA and the State not less than forty-five (45) days in advance of any  
13 sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the  
14 State shall have the right to take any additional samples that EPA or the State deem necessary.  
15 Upon request, EPA and the State shall allow the Settling Performing Defendants to take split or  
16 duplicate samples of any samples they take as part of the Plaintiff's oversight of the Settling  
17 Performing Defendants' implementation of the Work.

18 24. Settling Performing Defendants shall submit to EPA two (2) copies, and to the State one  
19 (1) copy, of the results of all sampling and/or tests or other data obtained or generated by or on  
20 behalf of Settling Performing Defendants with respect to the Site and/or the implementation of  
21 this Consent Decree unless EPA agrees otherwise.

1           25. Notwithstanding any provision of this Consent Decree, the United States and the State  
2 hereby retains all of their information gathering and inspection authorities and rights, including  
3 enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or  
4 regulations, and Settling Performing Defendants retain all of their rights and defenses concerning  
5 such information gathering and inspection authorities, rights, and enforcement actions.

6                           **IX. ACCESS AND INSTITUTIONAL CONTROLS**

7           26. If the Site, or any other property where access and/or land/water use restrictions are  
8 needed to implement this Consent Decree, is owned or controlled by any of the Settling  
9 Performing Defendants, such Settling Performing Defendants shall:

10                 a. commencing on the date of lodging of this Consent Decree, provide the United  
11 States, the State, and their representatives, including EPA and its contractors, with access at all  
12 reasonable times to the Site, or such other property, for the purpose of conducting any activity  
13 related to this Consent Decree including, but not limited to, the following activities:

14                         i. Monitoring the Work;

15                         ii. Verifying any data or information submitted to the United States or the  
16 State;

17                         iii. Conducting investigations relating to contamination at or near the Site;

18                         iv. Obtaining samples;

19                         v. Assessing the need for, planning, or implementing additional response  
20 actions at or near the Site;



1                   vi. Assessing implementation of quality assurance and quality control  
2 practices as defined in the approved Quality Assurance Project Plans;

3                   vii. Implementing the Work pursuant to the conditions set forth in Paragraph  
4 87 of this Consent Decree (Work Takeover);

5                   viii. Inspecting and copying records, operating logs, contracts, or other  
6 documents maintained or generated by Settling Performing Defendants or their agents, consistent  
7 with Section XXIV;

8                   ix. Assessing Settling Performing Defendants' compliance with this Consent  
9 Decree; and

10                  x. Determining whether the Site or other property is being used in a manner  
11 that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to  
12 this Consent Decree;

13                  b. commencing on the date of lodging of this Consent Decree, refrain from using the  
14 Site, or such other property, in any manner that would interfere with or adversely affect the  
15 implementation, integrity, or protectiveness of the remedial measures to be performed pursuant  
16 to this Consent Decree. Such restrictions include, but are not limited to, the use restrictions  
17 selected in, and soil management practices to be developed in accordance with, the OU2 ROD;  
18 and

19                  c. execute and record in the Recorder's Office of Baltimore County, State of  
20 Maryland, an easement, running with the land, that (i) grants a right of access for the purpose of  
21 conducting any activity related to this Consent Decree including, but not limited to, those

activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Performing Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to the other Settling Performing Defendants and their representatives. Such Settling Performing Defendants shall, within forty-five (45) days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix D, that is enforceable under the laws of the State of Maryland; and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Performing Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office of Baltimore County. Within thirty (30) days of recording the easement, such Settling Performing Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence)

1 shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and  
2 approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

3 27. If the Site, or any other property where access and/or land/water use restrictions are  
4 needed to implement this Consent Decree, is owned or controlled by persons other than any of  
5 the Settling Performing Defendants, Settling Performing Defendants shall use best efforts to  
6 secure from such persons:

7 a. an agreement to provide access for Settling Performing Defendants, as well as for  
8 the United States on behalf of EPA, and the State, as well as their representatives (including  
9 contractors), for the purpose of conducting any activity related to this Consent Decree including,  
10 but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

11 b. an agreement, enforceable by the Settling Performing Defendants and the United  
12 States, to refrain from using the Site, or such other property, in any manner that would interfere  
13 with or adversely affect the implementation, integrity, or protectiveness of the remedial measures  
14 to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited  
15 to, the use restrictions selected in, and soil management practices to be developed in accordance  
16 with, the OU2 ROD; and

17 c. the execution and recordation in the Recorder's Office of Baltimore County, State  
18 of Maryland, of an easement, running with the land, that (i) grants a right of access for the  
19 purpose of conducting any activity related to this Consent Decree including, but not limited to,  
20 those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to  
21 enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other

1 restrictions that EPA determines are necessary to implement, ensure non-interference with, or  
2 ensure the protectiveness of the remedial measures to be performed pursuant to this Consent  
3 Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to  
4 the other Settling Performing Defendants and their representatives. Within forty-five (45) days  
5 of the Effective Date, Settling Performing Defendants shall submit to EPA for review and  
6 approval with respect to such property:

7 (1) A draft easement, in substantially the form attached hereto as Appendix  
8 D, that is enforceable under the laws of the State of Maryland; and

9 (2) a current title insurance commitment, or some other evidence of title  
10 acceptable to EPA, which shows title to the land described in the easement to be free  
11 and clear of all prior liens and encumbrances (except when those liens or  
12 encumbrances are approved by EPA or when, despite best efforts, Settling  
13 Performing Defendants are unable to obtain release or subordination of such prior  
14 liens or encumbrances).

15 Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence,  
16 such Settling Performing Defendants shall update the title search and, if it is determined that  
17 nothing has occurred since the effective date of the commitment to affect the title adversely, use  
18 best efforts to obtain the property owner's signature and record the easement with the Recorder's  
19 Office of Baltimore County. Within thirty (30) days of recording the easement, such Settling  
20 Performing Defendants shall provide EPA with a final title insurance policy, or other final  
21 evidence of title acceptable to EPA, and a certified copy of the original recorded easement  
22 showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the  
23 easement and title evidence (including final title evidence) shall be prepared in accordance with  
24 the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must

1 be obtained as required by 40 U.S.C. § 255.

2 28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the  
3 payment of reasonable sums of money in consideration of access, access easements, land/water  
4 use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien  
5 or encumbrance. If (a) any access or land/water use restriction agreements required by  
6 Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within forty-five (45) days of  
7 the date of entry of this Consent Decree, (b) any access easements or restrictive easements  
8 required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form  
9 within forty-five (45) days of the date of entry of this Consent Decree, or (c) Settling Performing  
10 Defendants are unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph  
11 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or  
12 encumbrance to the easement being created pursuant to this Consent Decree within forty-five  
13 (45) days of the date of entry of this Consent Decree, Settling Performing Defendants shall  
14 promptly notify the United States in writing, and shall include in that notification a summary of  
15 the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 27  
16 of this Consent Decree. The United States may, as it deems appropriate, assist Settling  
17 Performing Defendants in obtaining access or land/water use restrictions, either in the form of  
18 contractual agreements or in the form of easements running with the land, or in obtaining the  
19 release or subordination of a prior lien or encumbrance, or as otherwise appropriate. Settling  
20 Performing Defendants shall reimburse the United States in accordance with the procedures in  
21 Section XVI (Payments for Response Costs), for all costs, direct or indirect, not inconsistent with

1 the NCP which are incurred by the United States in obtaining such access, land/water use  
2 restrictions, and/or the release/subordination of prior liens or encumbrances including, but not  
3 limited to, the cost of attorney time and the amount of monetary consideration paid or just  
4 compensation.

5 29. If EPA determines that land/water use restrictions in the form of state or local laws,  
6 regulations, ordinances or other governmental controls are needed to implement the remedy  
7 selected in the OU2 ROD, ensure the integrity and protectiveness thereof, or ensure non-  
8 interference therewith, Settling Performing Defendants shall cooperate with EPA's and the State's  
9 efforts to secure such governmental controls.

10 30. Notwithstanding any provision of this Consent Decree, the United States and the State  
11 retain all of their access authorities and rights, as well as all of their rights to require land/water  
12 use restrictions, including enforcement authorities, under CERCLA, RCRA, and any other  
13 applicable statute or regulations.

#### 14 **X. REPORTING REQUIREMENTS**

15 31. In addition to any other requirement of this Consent Decree, Settling Performing  
16 Defendants shall submit to EPA two (2), and to the State one (1), copies each of written monthly  
17 progress reports that: (a) describe the actions which have been taken toward achieving  
18 compliance with this Consent Decree during the previous month; (b) include a summary of all  
19 results of sampling and tests and all other data received or generated by Settling Performing  
20 Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans,

1 and other deliverables required by this Consent Decree completed and submitted during the  
2 previous month; (d) describe all actions, including, but not limited to, data collection and  
3 implementation of work plans, which are scheduled for the next six weeks and provide other  
4 information relating to the progress of construction (and if requested by EPA, provide critical  
5 path diagrams, Gantt charts, and Pert charts); (e) include information regarding percentage of  
6 completion, unresolved delays encountered or anticipated that may affect the future schedule for  
7 implementation of the Work, and a description of efforts made to mitigate those delays or  
8 anticipated delays; (f) include any modifications to the work plans or other schedules that  
9 Settling Performing Defendants have proposed to EPA or that have been approved by EPA; and  
10 (g) describe all activities undertaken in support of the Community Relations Plan during the  
11 previous month and those to be undertaken in the next six weeks. Settling Performing  
12 Defendants shall submit these progress reports to EPA and the State by the tenth day of every  
13 month following the lodging of this Consent Decree until EPA notifies the Settling Performing  
14 Defendants pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If  
15 requested by EPA or the State, Settling Performing Defendants shall also provide briefings for  
16 EPA and the State to discuss the progress of the Work.

17 32. The Settling Performing Defendants shall notify EPA of any change in the schedule  
18 described in the monthly progress report for the performance of any activity, including, but not  
19 limited to, implementation of work plans, no later than seven (7) days prior to the performance of  
20 the activity. Notwithstanding the foregoing, the Settling Performing Defendants shall notify EPA  
21 of any change in the schedule described in the monthly progress reports for the performance of

1 data collection no later than twenty-one (21) days prior to the performance of such activity.

2 33. Upon the occurrence of any event during performance of the Work that Settling  
3 Performing Defendants are required to report pursuant to Section 103 of CERCLA or Section  
4 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling  
5 Performing Defendants shall within twenty-four (24) hours of the time they knew or should have  
6 known of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA  
7 Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the  
8 event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is  
9 available, the EPA Region III Hotline at (215) 814-3255. These reporting requirements are in  
10 addition to the reporting required by CERCLA § 103 or EPCRA § 304.

11 34. Within twenty (20) days after the date they knew or should have known of the onset of  
12 such event, Settling Performing Defendants shall furnish to Plaintiffs a written report, signed by  
13 the Settling Performing Defendants' Project Coordinator, setting forth the events which occurred  
14 and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the  
15 conclusion of such an event, Settling Performing Defendants shall submit a report setting forth  
16 all actions taken in response.

17 35. Settling Performing Defendants shall submit to EPA three (3) copies, and to the State  
18 two (2) copies, of all plans, reports, and data required by the Remedial Design Work Plan, the  
19 Remedial Action Work Plan, or any other approved plans to EPA in accordance with the  
20 schedules set forth in such plans. Upon request by EPA, Settling Performing Defendants shall  
21 submit in electronic form all portions of any report or other deliverable Settling Performing



Defendants are required to submit pursuant to the provisions of this Consent Decree, but only to the extent Settling Performing Defendants have, or readily can obtain or convert, such portion in electronic form.

36. All reports and other documents submitted by Settling Performing Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Performing Defendants.

#### **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Performing Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Performing Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

1        38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to  
2 Paragraph 37(a), (b), or (c), Settling Performing Defendants shall proceed to take any action  
3 required by the plan, report, or other item, as approved or modified by EPA subject only to their  
4 right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution)  
5 with respect to the modifications or conditions made by EPA. In the event that EPA modifies the  
6 submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a  
7 material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX  
8 (Stipulated Penalties).

9        39.     a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling  
10 Performing Defendants shall, within twenty-one (21) days, or such other time as specified by  
11 EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for  
12 approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall  
13 accrue during the twenty-one (21)-day period, or otherwise specified period, but shall not be  
14 payable unless the resubmission is disapproved or modified due to a material defect as provided  
15 in Paragraphs 40 and 41.

16               b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph  
17 37(d), Settling Performing Defendants shall proceed, at the direction of EPA, to take any action  
18 required by any non-deficient portion of the submission. Implementation of any non-deficient  
19 portion of a submission shall not relieve Settling Performing Defendants of any liability for  
20 stipulated penalties under Section XX (Stipulated Penalties).

1       40. In the event that a resubmitted plan, report or other item is disapproved by EPA, in  
2 whole or in part, EPA may again require the Settling Performing Defendants to correct the  
3 deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify  
4 or develop the plan, report or other item. Settling Performing Defendants shall implement any  
5 such plan, report, or item as modified or developed by EPA, subject only to their right to invoke  
6 the procedures set forth in Section XIX (Dispute Resolution).

7       41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a  
8 material defect, Settling Performing Defendants shall be deemed to have failed to submit such  
9 plan, report, or item timely and adequately unless the Settling Performing Defendants invoke the  
10 dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is  
11 overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and  
12 Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and  
13 payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or  
14 modification is upheld, stipulated penalties shall accrue for such violation from the date on which  
15 the initial submission was originally required, as provided in Section XX.

16       42. All plans, reports, and other items required to be submitted to EPA under this Consent  
17 Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree.  
18 In the event EPA approves or modifies a portion of a plan, report, or other item required to be  
19 submitted to EPA under this Consent Decree, the approved or modified portion shall be  
20 enforceable under this Consent Decree unless, after Dispute Resolution under Section XIX of  
21 this Consent Decree, such modified portion has not been upheld.

## **XII. PROJECT COORDINATORS**

43. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:

Christopher J. Corbett (3HS22)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-3220 (phone)  
(215) 814-3002 (telefax)

EPA Alternate Project Coordinator:

Frank Klanchar (3HS22)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-3218 (phone)  
(215) 814-3002 (telefax)

Within twenty (20) days of lodging this Consent Decree, Settling Performing Defendants and the State will notify each other and EPA, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall not be an attorney for any of the Settling

1 Defendants in this matter. The Settling Performing Defendants' Project Coordinator and  
2 Alternate Project Coordinator may assign other representatives, including other contractors, to  
3 serve as a Site representative for oversight of performance of daily operations during remedial  
4 activities.

5 44. Plaintiffs may designate other representatives, including, but not limited to, EPA and  
6 State employees, and federal and State contractors and consultants, to observe and monitor the  
7 progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator  
8 and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project  
9 Manager and an On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300. In  
10 addition, EPA's Project Coordinator and Alternate Project Coordinator shall have authority,  
11 consistent with the National Contingency Plan, to halt any Work required by this Consent Decree  
12 and to take any necessary response action when s/he determines that conditions at the Site  
13 constitute an emergency situation or may present an immediate threat to public health or welfare  
14 or the environment due to release or threatened release of Waste Material.

15 45. Reserved.

16 **XIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

17 46. Within forty-five (45) days of the Effective Date, Settling Performing Defendants shall  
18 establish and maintain financial security in the amount of \$7,345,000 in one or more of the  
19 following forms:

- 20 (a) A surety bond guaranteeing performance of the Work;
- 21 (b) One or more irrevocable letters of credit equaling the total estimated cost of the

1 Work;

- 2 (c) A trust fund;
- 3 (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries,  
4 or by one or more unrelated corporations that have a substantial business relationship  
5 with at least one of the Settling Performing Defendants; or
- 6 (e) A demonstration that one or more of the Settling Performing Defendants satisfy the  
7 requirements of 40 C.F.R. § 264.143(f). For these purposes, references in 40 C.F.R.  
8 § 264.143(f) to “the sum of the current closure and post-closure cost estimates and  
9 the current plugging and abandonment cost estimates” shall mean the amount of  
10 financial security specified above. If the Settling Performing Defendants who seek to  
11 provide a demonstration under 40 C.F.R. § 264.143(f) have provided a similar  
12 demonstration at other RCRA or CERCLA sites, the amount for which they were  
13 providing financial assurance at those other sites should generally be added to the  
14 estimated costs of the Work from this paragraph.

15 Such financial security shall be maintained by the Settling Performing Defendants until EPA  
16 agrees that the Work has been completed and issues a Certification of Completion in accordance  
17 with Paragraph 51.b.

18 47. If the Settling Performing Defendants seek to demonstrate the ability to complete the  
19 Work through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree,  
20 Settling Performing Defendants shall demonstrate that the guarantor satisfies the requirements of  
21 40 C.F.R. § 264.143(f). If Settling Performing Defendants seek to demonstrate their ability to

1 complete the Work by means of the financial test or the corporate guarantee pursuant to  
2 Paragraph 46(d) or (e), they shall resubmit sworn statements conveying the information required  
3 by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that  
4 EPA, after a reasonable opportunity for review and comment by the State, determines at any time  
5 that the financial assurances provided pursuant to this Section are inadequate, Settling  
6 Performing Defendants shall, within forty-five (45) days of receipt of notice of EPA's  
7 determination, obtain and present to EPA for approval one of the other forms of financial  
8 assurance listed in Paragraph 46 of this Consent Decree. Settling Performing Defendants'  
9 inability to demonstrate financial ability to complete the Work shall not excuse performance of  
10 any activities required under this Consent Decree.

11 48. If Settling Performing Defendants can show that the estimated cost to complete the  
12 remaining Work has diminished below the amount set forth in Paragraph 46 above, Settling  
13 Performing Defendants may, on any anniversary date of entry of this Consent Decree, or at any  
14 other time agreed to by the Parties, reduce the amount of the financial security provided under  
15 this Section to the estimated cost of the remaining Work to be performed. Settling Performing  
16 Defendants shall submit a proposal for such reduction to EPA, in accordance with the  
17 requirements of this Section, and may reduce the amount of the security upon approval by EPA.  
18 In the event of a dispute, Settling Performing Defendants may reduce the amount of the security  
19 in accordance with the final administrative or judicial decision resolving the dispute.

20 49. Settling Performing Defendants may change the form of financial assurance provided  
21 under this Section at any time, upon notice to and approval by EPA, provided that the new form

1 of assurance meets the requirements of this Section. In the event of a dispute, Settling  
2 Performing Defendants may change the form of the financial assurance only in accordance with  
3 the final administrative or judicial decision resolving the dispute.

#### 4 **XIV. CERTIFICATION OF COMPLETION**

##### 5 **50. Completion of the Remedial Action**

6 a. Within ninety (90) days after Settling Performing Defendants conclude that the  
7 Remedial Action has been fully performed and the Performance Standards have been attained,  
8 Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be  
9 attended by Settling Performing Defendants, EPA, and the State. If, after the pre-certification  
10 inspection, the Settling Performing Defendants still believe that the Remedial Action has been  
11 fully performed and the Performance Standards have been attained, they shall submit a written  
12 report requesting certification to EPA for approval, with a copy to the State, pursuant to Section  
13 XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In  
14 the report, a registered professional engineer and the Settling Performing Defendants' Project  
15 Coordinator shall state that the Remedial Action has been completed in full satisfaction of the  
16 requirements of this Consent Decree. The written report shall include as-built drawings signed  
17 and stamped by a professional engineer. The report shall contain the following statement, signed  
18 by a Duly Authorized Representative of a Settling Performing Defendant or the Settling  
19 Performing Defendants' Project Coordinator:

20 "Except as provided below, I certify that the information contained in or accompanying  
21 this submission is true, accurate, and complete.



1 “As to those portions of this submission for which I cannot personally verify their  
2 accuracy, I certify that this submission and all attachments were prepared at my  
3 direction and with my review, in accordance with a system designed to assure that  
4 qualified personnel gathered and evaluated the information submitted. Based on my  
5 inquiry of the person or persons who manage the system, or those persons directly  
6 responsible for gathering the information, the information submitted is true, accurate,  
7 and complete to the best of my knowledge, information, and belief.

8 “This certification shall not apply to information contained in the submission which was  
9 inserted or included by EPA, or was required by EPA to be inserted or included over  
10 objections.

11 “I am aware that there are significant penalties for submitting false information,  
12 including the possibility of fine and imprisonment for knowing violations.”

13 If, after completion of the pre-certification inspection and receipt and review of the written  
14 report, EPA, after reasonable opportunity for review and comment by the State, determines that  
15 the Remedial Action or any portion thereof has not been completed in accordance with this  
16 Consent Decree or that the Performance Standards have not been achieved, EPA will notify  
17 Settling Performing Defendants in writing of the activities that must be undertaken by Settling  
18 Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and  
19 achieve the Performance Standards. Provided, however, that EPA may only require Settling  
20 Performing Defendants to perform such activities pursuant to this Paragraph to the extent that  
21 such activities are consistent with the “scope of the remedy selected in the OU2 ROD,” as that  
22 term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of  
23 such activities consistent with the Consent Decree or require the Settling Performing Defendants  
24 to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and  
25 Other Submissions). Settling Performing Defendants shall perform all activities described in the  
26 notice in accordance with the specifications and schedules established pursuant to this Paragraph,

1 subject to their right to invoke the dispute resolution procedures set forth in Section XIX  
2 (Dispute Resolution).

3 b. If EPA concludes, based on the initial or any subsequent report requesting  
4 Certification of Completion and after a reasonable opportunity for review and comment by the  
5 State, that the Remedial Action has been performed in accordance with this Consent Decree and  
6 that the Performance Standards have been achieved, EPA will so certify in writing to Settling  
7 Performing Defendants. This certification shall constitute the Certification of Completion of the  
8 Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI  
9 (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall  
10 not affect Settling Performing Defendants' obligations under this Consent Decree.

11 51. Completion of the Work

12 a. Within ninety (90) days after Settling Performing Defendants conclude that all  
13 phases of the Work (including O & M but excluding Section VII, Remedy review), have been  
14 fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification  
15 inspection to be attended by Settling Performing Defendants, EPA, and the State. If, after the  
16 pre-certification inspection, the Settling Performing Defendants still believe that the Work has  
17 been fully performed, Settling Performing Defendants shall submit a written report by a  
18 registered professional engineer stating that the Work has been completed in full satisfaction of  
19 the requirements of this Consent Decree. The report shall contain the following statement,  
20 signed by a Duly Authorized Representative of a Settling Defendant or the Settling Performing  
21 Defendants' Project Coordinator:

1 “Except as provided below, I certify that the information contained in or accompanying  
2 this submission is true, accurate, and complete.

3 “As to those portions of this submission for which I cannot personally verify their  
4 accuracy, I certify that this submission and all attachments were prepared at my  
5 direction and with my review, in accordance with a system designed to assure that  
6 qualified personnel gathered and evaluated the information submitted. Based on my  
7 inquiry of the person or persons who manage the system, or those persons directly  
8 responsible for gathering the information, the information submitted is true, accurate,  
9 and complete to the best of my knowledge, information, and belief.

10 “This certification shall not apply to information contained in the submission which was  
11 inserted or included by EPA, or was required by EPA to be inserted or included over  
12 objections.

13 “I am aware that there are significant penalties for submitting false information,  
14 including the possibility of fine and imprisonment for knowing violations.”

15 If, after review of the written report, EPA, after reasonable opportunity for review and comment  
16 by the State, determines that any portion of the Work has not been completed in accordance with  
17 this Consent Decree, EPA will notify Settling Performing Defendants in writing of the activities  
18 that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to  
19 complete the Work. Provided, however, that EPA may only require Settling Performing  
20 Defendants to perform such activities pursuant to this Paragraph to the extent that such activities  
21 are consistent with the “scope of the remedy selected in the OU2 ROD,” as that term is defined in  
22 Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities  
23 consistent with the Consent Decree or require the Settling Performing Defendants to submit a  
24 schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other  
25 Submissions). Settling Performing Defendants shall perform all activities described in the notice  
26 in accordance with the specifications and schedules established therein, subject to their right to

1 invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

2 b. If EPA concludes, based on the initial or any subsequent request for Certification  
3 of Completion by Settling Performing Defendants and after a reasonable opportunity for review  
4 and comment by the State, that the Work has been performed in accordance with this Consent  
5 Decree, EPA will so notify the Settling Performing Defendants in writing.

#### 6 **XV. EMERGENCY RESPONSE**

7 52. In the event of any action or occurrence during the performance of the Work which  
8 causes or threatens a release of Waste Material from the Site that constitutes an emergency  
9 situation or may present an immediate threat to public health or welfare or the environment,  
10 Settling Performing Defendants shall, subject to Paragraph 53, immediately take all appropriate  
11 action to prevent, abate, or minimize such release or threat of release, and shall immediately  
12 notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's  
13 Alternate Project Coordinator. If neither of these persons is available, the Settling Performing  
14 Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Performing  
15 Defendants shall take such actions in consultation with EPA's Project Coordinator or other  
16 available authorized EPA officer and in accordance with all applicable provisions of the Health  
17 and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed  
18 pursuant to this Consent Decree. In the event that Settling Performing Defendants fail to take  
19 appropriate response action as required by this Section, and EPA or, as appropriate, the State  
20 takes such action instead, Settling Performing Defendants shall reimburse EPA and the State all

1 costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments  
2 for Response Costs).

3 53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit  
4 any authority of the United States, or the State, to (a) take all appropriate action to protect human  
5 health and the environment or to prevent, abate, respond to, or minimize an actual or threatened  
6 release of Waste Material on, at, or from the Site, or (b) direct or order such action, or seek an  
7 order from the Court, to protect human health and the environment or to prevent, abate, respond  
8 to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject  
9 to Section XXI (Covenants Not to Sue by Plaintiffs).

#### 10 **XVI. PAYMENTS FOR RESPONSE COSTS**

11 54. Settling Non-Performing Defendants shall make payments to the Performing Defendants  
12 as required by the Side Agreements referenced in Paragraph I.H of this Consent Decree to assist  
13 in financing the Work.

#### 14 55. Payments for Future Response Costs.

15 a. Settling Performing Defendants shall pay to EPA all Future Response Costs not  
16 inconsistent with the National Contingency Plan. On a periodic basis, the United States will send  
17 Settling Performing Defendants a bill requiring payment that includes a cost summary, setting  
18 forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Performing  
19 Defendants shall make all payments within forty-five (45) days of Settling Performing  
20 Defendants' receipt of each bill requiring payment, except as otherwise provided in

Paragraph 56. Settling Performing Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment, EPA Site/Spill ID No. 03B2, and DOJ Case Number 90-11-2-299/1. Settling Performing Defendants shall send the check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by Settling Performing Defendants pursuant to Subparagraph 55.a shall be deposited in the Kane and Lombard Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Settling Performing Defendants shall reimburse the State for all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send Settling Performing Defendants a bill requiring payment that includes a State-prepared cost summary, which includes direct and indirect costs incurred by the State and its contractors, in accordance with its authority under Md. Env'tl. Article 7-221, on a periodic basis. Settling Performing Defendants shall make all payments within thirty (30) days of Settling Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. Settling Performing Defendants shall make all payments required by this subparagraph by a

certified or cashier's check or checks made payable to the "Hazardous Substance Control Fund, Maryland Department of the Environment" and reference the "Kane and Lombard Superfund Site." The check(s) and a copy of the invoice issued by the State shall be sent to:

Maryland Department of the Environment  
Box 1417  
Baltimore, MD 21203

56. Settling Performing Defendants may contest payment of any Future Response Costs under Paragraph 55 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Performing Defendants shall within the 45 day period pay all uncontested Future Response Costs to the United States or the State in the manner described in Paragraph 55. Simultaneously, the Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Maryland and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Performing Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State (if State costs are involved) a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including,

1 but not limited to, information containing the identity of the bank and bank account under which  
2 the escrow account is established as well as a bank statement showing the initial balance of the  
3 escrow account. Simultaneously with establishment of the escrow account, the Settling  
4 Performing Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute  
5 Resolution). If the United States or the State prevails in the dispute, within 15 days of the  
6 resolution of the dispute, the Settling Performing Defendants shall pay the sums due (with  
7 accrued interest) to the United States or the State, if State costs are disputed, in the manner  
8 described in Paragraph 55. If the Settling Performing Defendants prevail concerning any aspect  
9 of the contested costs, the Settling Performing Defendants shall pay that portion of the costs (plus  
10 associated accrued interest) for which they did not prevail to the United States or the State, if  
11 State costs are disputed in the manner described in Paragraph 55; Settling Performing Defendants  
12 shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth  
13 in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute  
14 Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling  
15 Performing Defendants' obligation to reimburse the United States and the State for their Future  
16 Response Costs.

17 57. In the event that the payments required by Paragraph 55 are not made within forty-five  
18 (45) days of the Settling Performing Defendants' receipt of the bill, Settling Performing  
19 Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall  
20 begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling  
21 Performing Defendants' payment. Payments of Interest made under this Paragraph shall be in



1 addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling  
2 Performing Defendants' failure to make timely payments under this Section including, but not  
3 limited to, payment of stipulated penalties pursuant to Paragraph 72. The Settling Performing  
4 Defendants shall make all payments required by this Paragraph in the manner described in  
5 Paragraph 55.

## 6 **XVII. INDEMNIFICATION AND INSURANCE**

7 58. a. The United States and the State do not assume any liability by entering into this  
8 agreement or by virtue of any designation of Settling Performing Defendants as EPA's authorized  
9 representatives under Section 104(e) of CERCLA. Settling Performing Defendants shall  
10 indemnify, save, and hold harmless the United States, the State, and their officials, agents,  
11 employees, contractors, subcontractors, or representatives for or from any and all claims or  
12 causes of action arising from, or on account of, negligent or other wrongful acts or omissions of  
13 Settling Performing Defendants, their officers, directors, employees, agents, contractors,  
14 subcontractors, and any persons acting on their behalf or under their control, in carrying out  
15 activities pursuant to this Consent Decree, including, but not limited to, any claims arising from  
16 any designation of Settling Performing Defendants as EPA's authorized representatives under  
17 Section 104(e) of CERCLA. Further, the Settling Performing Defendants agree to pay the United  
18 States and the State all costs they incur including, but not limited to, attorneys fees and other  
19 expenses of litigation and settlement arising from, or on account of, claims made against the  
20 United States or the State based on negligent or other wrongful acts or omissions of Settling

1 Performing Defendants, their officers, directors, employees, agents, contractors, subcontractors,  
2 and any persons acting on their behalf or under their control, in carrying out activities pursuant to  
3 this Consent Decree. Neither the United States nor the State shall be held out as a party to any  
4 contract entered into by or on behalf of Settling Performing Defendants in carrying out activities  
5 pursuant to this Consent Decree. Neither the Settling Performing Defendants nor any such  
6 contractor shall be considered an agent of the United States or the State.

7           b. The United States and the State shall give Settling Performing Defendants notice  
8 of any claim for which the United States or the State plans to seek indemnification pursuant to  
9 Paragraph 58.a., and shall consult with Settling Performing Defendants prior to settling such  
10 claim.

11           59. Settling Defendants waive all claims against the United States and the State for damages  
12 or reimbursement or for set-off of any payments made or to be made to the United States or the  
13 State, arising from or on account of any contract, agreement, or arrangement between any one or  
14 more of Settling Defendants and any person for performance of Work on or relating to the Site,  
15 including, but not limited to, claims on account of construction delays. In addition, Settling  
16 Performing Defendants shall indemnify and hold harmless the United States and the State with  
17 respect to any and all claims for damages or reimbursement arising from or on account of any  
18 contract, agreement, or arrangement between any one or more of Settling Performing Defendants  
19 and any person for performance of Work on or relating to the Site, including, but not limited to,  
20 claims on account of construction delays.

1       60. No later than fifteen (15) days before commencing any on-site Work, Settling  
2 Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's  
3 Certification of Completion of the Remedial Action pursuant to Paragraph 50.b of Section XIV  
4 (Certification of Completion), comprehensive general liability insurance with limits of five  
5 million dollars, combined single limit, and automobile liability insurance with limits of  
6 \$500,000, combined single limit, naming the United States and the State as additional insureds.  
7 In addition, for the duration of this Consent Decree, Settling Performing Defendants shall satisfy,  
8 or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations  
9 regarding the provision of worker's compensation insurance for all persons performing the Work  
10 on behalf of Settling Performing Defendants in furtherance of this Consent Decree. Prior to  
11 commencement of the Work under this Consent Decree, Settling Performing Defendants shall  
12 provide to EPA and the State certificates of such insurance and a copy of each insurance policy.  
13 Settling Performing Defendants shall resubmit such certificates and copies of policies each year  
14 on the anniversary of the Effective Date of this Consent Decree. If Settling Performing  
15 Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or  
16 subcontractor maintains insurance equivalent to that described above, or insurance covering the  
17 same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling  
18 Performing Defendants need provide only that portion of the insurance described above which is  
19 not maintained by the contractor or subcontractor. Settling Performing Defendants may satisfy  
20 the provisions of this Paragraph 60 if they submit to EPA for approval one of the financial  
21 assurance mechanisms of Section XIII (Assurance of Ability to Complete Work) in at least the

1 amounts stated in this Paragraph 60 demonstrating that Settling Performing Defendants are able  
2 to pay any claims arising out of Settling Performing Defendants' performance of their obligations  
3 under this Consent Decree. Such financial assurance mechanism shall meet all of the  
4 requirements of Section XIII (Assurance of Ability to Complete Work). If Settling Performing  
5 Defendants seek to utilize the mechanisms set forth in Section XIII (Assurance of Ability to  
6 Complete Work) to satisfy the provisions of this Paragraph 60, they must demonstrate an ability  
7 to pay the amounts required under this Paragraph, above and beyond that required by the  
8 obligations of Section XIII (Assurance of Ability to Complete Work).

#### 9 **XVIII. FORCE MAJEURE**

10 61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising  
11 from causes beyond the control of the Settling Performing Defendants, of any entity controlled by  
12 Settling Performing Defendants, or of Settling Performing Defendants' contractors, that delays or  
13 prevents the performance of any obligation under this Consent Decree despite Settling  
14 Performing Defendants' best efforts to fulfill the obligation. The requirement that the Settling  
15 Performing Defendants exercise "best efforts to fulfill the obligation" includes using best efforts  
16 to anticipate any potential force majeure event and best efforts to address the effects of any  
17 potential force majeure event (a) as it is occurring, and (b) following the potential force majeure  
18 event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not  
19 include financial inability to complete the Work, a failure to attain the Performance Standards, or  
20 increased costs.

1       62. If any event occurs or has occurred that may delay the performance of any obligation  
2 under this Consent Decree, whether or not caused by a force majeure event, the Settling  
3 Performing Defendants shall notify orally EPA's Project Coordinator or, in his or her absence,  
4 EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are  
5 unavailable, the Director of the EPA Region III Hazardous Site Cleanup Division, within forty-  
6 eight (48) hours of when Settling Performing Defendants first knew that the event might cause a  
7 delay. Within five (5) days thereafter, Settling Performing Defendants shall provide in writing to  
8 EPA and the State an explanation and description of the reasons for the delay; the anticipated  
9 duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule  
10 for implementation of any measures to be taken to prevent or mitigate the delay or the effect of  
11 the delay; the Settling Performing Defendants' rationale for attributing such delay to a force  
12 majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion  
13 of the Settling Performing Defendants, such event may cause or contribute to an endangerment to  
14 public health, welfare or the environment. The Settling Performing Defendants shall include  
15 with any notice all available documentation supporting their claim that the delay was attributable  
16 to a force majeure. Failure to comply with the above requirements shall preclude Settling  
17 Performing Defendants from asserting any claim of force majeure for that event for the period of  
18 time of such failure to comply, and for any additional delay caused by such failure. Settling  
19 Performing Defendants shall be deemed to know of any circumstance of which Settling  
20 Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling  
21 Performing Defendants' contractors knew or should have known.

1        63. If EPA, after a reasonable opportunity for review and comment by the State, agrees that  
2        the delay or anticipated delay is attributable to a force majeure event, the time for performance of  
3        the obligations under this Consent Decree that are affected by the force majeure event will be  
4        extended by EPA, after a reasonable opportunity for review and comment by the State, for such  
5        time as is necessary to complete those obligations on an expedited basis. An extension of the  
6        time for performance of the obligations affected by the force majeure event shall not, of itself,  
7        extend the time for performance of any other obligation. If EPA, after a reasonable opportunity  
8        for review and comment by the State, does not agree that the delay or anticipated delay has been  
9        or will be caused by a force majeure event, EPA will notify the Settling Performing Defendants  
10       in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the  
11       State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling  
12       Performing Defendants in writing of the length of the extension, if any, for performance of the  
13       obligations affected by the force majeure event.

14       64. If the Settling Performing Defendants elect to invoke the dispute resolution procedures  
15       set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days  
16       after receipt of EPA's notice. In any such proceeding, Settling Performing Defendants shall have  
17       the burden of demonstrating by a preponderance of the evidence that the delay or anticipated  
18       delay has been or will be caused by a force majeure event, that the duration of the delay or the  
19       extension sought was or will be warranted under the circumstances, that best efforts were  
20       exercised to avoid and mitigate the effects of the delay, and that Settling Performing Defendants  
21       complied with the requirements of Paragraphs 61 and 62, above. If Settling Performing

1 Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling  
2 Performing Defendants of the affected obligation of this Consent Decree identified to EPA and  
3 the Court, and the schedules for the affected obligations shall be modified in accordance with the  
4 procedures set forth in Paragraph 63 of this Consent Decree.

### 5 **XIX. DISPUTE RESOLUTION**

6 65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution  
7 procedures described in this Section shall be the exclusive mechanism to resolve disputes arising  
8 between EPA and the Settling Performing Defendants under or with respect to this Consent  
9 Decree, and the procedures described in Appendix F to this Consent Decree shall be the  
10 exclusive mechanism to resolve disputes between the State and the Settling Performing  
11 Defendants that are described therein. However, the procedures set forth in this Section shall not  
12 apply to actions by the United States to enforce obligations of the Settling Performing  
13 Defendants that have not been disputed in accordance with this Section.

14 66. Any dispute which arises under or with respect to this Consent Decree shall in the first  
15 instance be the subject of informal negotiations between the parties to the dispute. The period  
16 for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless  
17 it is modified by written agreement of the parties to the dispute. The dispute shall be considered  
18 to have arisen upon receipt by EPA (in the case of a dispute initiated by the Settling Performing  
19 Defendants), or any one of the Settling Performing Defendants (in the case of a dispute initiated  
20 by EPA) of a written Notice of Dispute.

1        67. a. In the event that the parties cannot resolve a dispute by informal negotiations under  
2        the preceding Paragraph, then the position advanced by EPA shall be considered binding unless,  
3        within ten (10) days after the conclusion of the informal negotiation period, Settling Performing  
4        Defendants invoke the formal dispute resolution procedures of this Section by serving on the  
5        United States and the State a written Statement of Position on the matter in dispute, including,  
6        but not limited to, any factual data, analysis or opinion supporting that position and any  
7        supporting documentation relied upon by the Settling Performing Defendants. The Statement of  
8        Position shall specify the Settling Performing Defendants' position as to whether formal dispute  
9        resolution should proceed under Paragraph 68 or Paragraph 69.

10        b. Within fourteen (14) days after receipt of Settling Performing Defendants'  
11        Statement of Position, EPA will serve on Settling Performing Defendants its Statement of  
12        Position, including, but not limited to, any factual data, analysis, or opinion supporting that  
13        position and all supporting documentation relied upon by EPA. EPA's Statement of Position  
14        shall include a statement as to whether formal dispute resolution should proceed under Paragraph  
15        68 or 69. Within ten (10) days after receipt of EPA's Statement of Position, Settling Performing  
16        Defendants may submit a Reply.

17        c. If there is disagreement between EPA and the Settling Performing Defendants as  
18        to whether dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute  
19        shall follow the procedures set forth in the Paragraph determined by EPA to be applicable.  
20        However, if the Settling Performing Defendants ultimately appeal to the Court to resolve the  
21        dispute, the Court shall determine which Paragraph is applicable in accordance with the



standards of applicability set forth in Paragraphs 68 and 69.

68. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Performing Defendants regarding the validity of the OU2 ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon the Settling Performing Defendants, subject only to the right to seek judicial review pursuant to Paragraph 68.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 68.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Performing Defendants with the Court and served on all Parties within ten (10) days of

1 receipt of EPA's decision. The motion shall include a description of the matter in dispute, the  
2 efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within  
3 which the dispute must be resolved to ensure orderly implementation of this Consent Decree.  
4 The United States may file a response to Settling Performing Defendants' motion.

5 d. In proceedings on any dispute governed by this Paragraph, Settling Performing  
6 Defendants shall have the burden of demonstrating that the decision of the Director of the  
7 Hazardous Site Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in  
8 accordance with law. Judicial review of EPA's decision shall be on the administrative record  
9 compiled pursuant to Paragraph 68.a.

10 69. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of  
11 any response action nor are otherwise accorded review on the administrative record under  
12 applicable principles of administrative law, shall be governed by this Paragraph.

13 a. Following receipt of Settling Performing Defendants' Statement of Position  
14 submitted pursuant to Paragraph 67, the Director of the Hazardous Site Cleanup Division, EPA  
15 Region III, will issue a final decision resolving the dispute. The Director's decision shall be  
16 binding on the Settling Performing Defendants unless, within ten (10) days of receipt of the  
17 decision, the Settling Performing Defendants file with the Court and serve on the parties a  
18 motion for judicial review of the decision setting forth the matter in dispute, the efforts made by  
19 the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute  
20 must be resolved to ensure orderly implementation of the Consent Decree. The United States  
21 may file a response to Settling Performing Defendants' motion.

b. Notwithstanding Paragraph P of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Performing Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue as provided in Section XX (Stipulated Penalties) but payment shall be stayed pending resolution of the dispute as provided in Paragraph 79. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Performing Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

## **XX. STIPULATED PENALTIES**

71. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Performing Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the

specified time schedules established by and approved under this Consent Decree.

72. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$3,000.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$8,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$12,000.00	31 <sup>st</sup> day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Performing Defendants), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payments for Response Costs).

73. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 1,000.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 2,000.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 3,000.00	31 <sup>st</sup> day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 72(b) of this Consent Decree.

1       74. In the event that EPA assumes performance of a portion of the Work pursuant to  
2 Paragraph 87 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Performing  
3 Defendants shall be liable for a stipulated penalty in the amount of \$50,000. In the event that  
4 EPA assumes performance of all of the Work pursuant to Paragraph 87 of Section XXI  
5 (Covenants Not to Sue by Plaintiffs), Settling Performing Defendants shall be liable for a  
6 stipulated penalty in the amount of \$100,000. For purposes of the preceding sentence, "all of the  
7 Work" shall mean all actions necessary for EPA to complete a remedial design for use in  
8 implementing the OU2 ROD, or to complete all actions necessary for EPA to implement the  
9 OU2 ROD in accordance with such design or the Remedial Design prepared by the Settling  
10 Performing Defendants.

11       75. Except as provided otherwise in this Paragraph, all penalties shall begin to accrue on the  
12 day after the complete performance is due or the day a violation occurs, and shall continue to  
13 accrue through the final day of the correction of the noncompliance or completion of the activity.  
14 However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under  
15 Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning  
16 on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling  
17 Performing Defendants of any deficiency; (2) with respect to a decision by the Director of the  
18 Hazardous Site Cleanup Division, EPA Region III, under Paragraph 68.b. or 69.a. of Section XIX  
19 (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that  
20 Settling Performing Defendants' reply to EPA's Statement of Position is received until the date  
21 that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision

1 regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under  
2 Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the  
3 Court's receipt of the final submission regarding the dispute until the date that the Court issues a  
4 final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of  
5 separate penalties for separate violations of this Consent Decree.

6 76. Following EPA's determination that Settling Performing Defendants have failed to  
7 comply with a requirement of this Consent Decree, EPA may give Settling Performing  
8 Defendants written notification of the same and describe the noncompliance. EPA may send the  
9 Settling Performing Defendants a written demand for the payment of the penalties. However,  
10 penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has  
11 notified the Settling Performing Defendants of a violation.

12 77. All penalties accruing under this Section shall be due and payable to the United States  
13 within thirty (30) days of the Settling Performing Defendants' receipt from EPA of a demand for  
14 payment of the penalties, unless Settling Performing Defendants invoke the Dispute Resolution  
15 procedures under Section XIX (Dispute Resolution). Settling Performing Defendants shall not  
16 be in violation of this Consent Decree for failing to pay stipulated penalties that were not  
17 demanded. All payments to the United States under this Section shall be paid by certified or  
18 cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to  
19 the United States Environmental Protection Agency, Region III, Attention: Superfund  
20 Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, shall indicate that the payment is  
21 for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #03B2, the DOJ

Case Number 90-11-2-299/1, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

78. The payment of penalties shall not alter in any way Settling Performing Defendants' obligation to complete the performance of the Work required under this Consent Decree.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Performing Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Performing Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within twenty-one (21) days of receipt of the final appellate court

1 decision, the escrow agent shall pay the balance of the account to EPA or to Settling Performing  
2 Defendants to the extent that they prevail.

3 80. a. If Settling Performing Defendants fail to pay stipulated penalties when due, the  
4 United States may institute proceedings to collect the penalties, as well as interest. Settling  
5 Performing Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on  
6 the date of demand made pursuant to Paragraph 77.

7 b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
8 any way limiting the ability of the United States to seek any other remedies or sanctions available  
9 by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon  
10 which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA.  
11 Provided, however, that for any particular violation of this Consent Decree, the United States  
12 shall be limited to either demanding stipulated penalties pursuant to this Section XX of the  
13 Consent Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA, except in the  
14 case of a willful violation of the Consent Decree.

15 81. Notwithstanding any other provision of this Section, the United States may, in its  
16 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to  
17 this Consent Decree.

18 **XXI. COVENANTS NOT TO SUE BY PLAINTIFFS**

19 82. In consideration of the actions that will be performed and the payments that will be  
20 made by the Settling Performing Defendants under the terms of the Consent Decree, and except



as specifically provided in Paragraph 86 of this Section, the United States and the State covenant not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. As to the Settling Performing Defendants, these covenants not to sue shall take effect upon the Effective Date and are conditioned upon the satisfactory performance by Settling Performing Defendants of their obligations under this Consent Decree. As to the Settling Non-Performing Defendants, these covenants not to sue shall take effect upon complete payment by each Settling Non-Performing Defendant of its payments to Settling Performing Defendants required by the Side Agreements referred to in Paragraph I.H of this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

83. Reserved.

84. Reserved.

85. Reserved.

86. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 82. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants with respect to:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;;

(4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(7) liability for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the Work), and for further response actions that EPA cannot require Settling Performing Defendants to perform under Paragraph 20 of this Consent Decree.

87. Work Takeover. In the event EPA determines that Settling Performing Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an

1 endangerment to human health or the environment, EPA may assume the performance of all or  
2 any portions of the Work as EPA determines necessary. Settling Performing Defendants may  
3 invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute  
4 EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred  
5 by the United States in performing the Work pursuant to this Paragraph shall be considered  
6 Future Response Costs that Settling Performing Defendants shall pay pursuant to Section XVI  
7 (Payment for Response Costs).

8 88. Notwithstanding any other provision of this Consent Decree, the United States and the  
9 State retain all authority and reserve all rights to take any and all response actions authorized by  
10 law.

## 11 **XXII. COVENANTS BY SETTLING DEFENDANTS**

12 89. Covenant Not to Sue. Subject to the reservations in Paragraph 90, Settling Defendants  
13 hereby covenant not to sue and agree not to assert any claims or causes of action against the  
14 United States or the State with respect to the Work, past response actions, and Past and Future  
15 Response Costs as defined in this Consent Decree, including, but not limited to:

16 a. any direct or indirect claim for reimbursement from the Hazardous Substance  
17 Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through  
18 CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

19 b. any claims against the United States, including any department, agency or  
20 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

1 c. any claims arising out of response actions at or in connection with the Site,  
2 including any claim under the United States Constitution, the State Constitution, the Tucker Act,  
3 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common  
4 law.

5 Except as provided in Paragraph 92 (Waiver of Claims Against De Micromis Parties) and  
6 Paragraph 97 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in  
7 the event that the United States or the State brings a cause of action or issues an order pursuant to  
8 the reservations set forth in Paragraphs 86(2) - (4) or 86(7), but only to the extent that Settling  
9 Defendants' claims arise from the same response action, response costs, or damages that the  
10 United States or the State is seeking pursuant to the applicable reservation.

11 90. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims  
12 against the United States, subject to the provisions of Chapter 171 of Title 28 of the United  
13 States Code, for money damages for injury or loss of property or personal injury or death caused  
14 by the negligent or wrongful act or omission of any employee of the United States while acting  
15 within the scope of his or her office or employment under circumstances where the United States,  
16 if a private person, would be liable to the claimant in accordance with the law of the place where  
17 the act or omission occurred. However, any such claim shall not include a claim for any damages  
18 caused, in whole or in part, by the act or omission of any person, including any contractor, who is  
19 not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim  
20 include a claim based on EPA's selection of response actions, or the oversight or approval of the  
21 Settling Performing Defendants' plans or activities. The foregoing applies only to claims which

1 are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign  
2 immunity is found in a statute other than CERCLA.

3 91. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a  
4 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
5 § 300.700(d).

6 92. Settling Defendants agree not to assert any claims and to waive all claims or causes of  
7 action that they may have for all matters relating to the Site, including for contribution, against  
8 any person where the person's liability to Settling Defendants with respect to the Site is based  
9 solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of  
10 hazardous substances at the Site, or having accepted for transport for disposal or treatment of  
11 hazardous substances at the Site if the materials contributed by such person to the Site containing  
12 hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the  
13 Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall  
14 not apply to any claim or cause of action against any person meeting the above criteria if EPA  
15 has determined that the materials contributed to the Site by such person contributed or could  
16 contribute significantly to the costs of response at the Site. This waiver also shall not apply with  
17 respect to any defense, claim, or cause of action that a Settling Defendant may have against any  
18 person if such person asserts a claim or cause of action relating to the Site against such Settling  
19 Defendant. The burden of proof for de micromis party status shall be as specified in section  
20 107(o)(4) of CERCLA, 42 U.S.C. § 9607(o)(4).

**XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

93. Except as provided in Paragraph 92 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 92 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party.

94. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree, provided, however, that nothing contained here shall prevent the Settling Defendants from enforcing private agreements among themselves relating to the Site, including without limitation, the Side Agreements. The “matters addressed” in this settlement are Past and Future Response Costs and the Work.

95. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters addressed in this Consent Decree they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

1        96. The Settling Defendants also agree that with respect to any suit or claim for contribution  
2 brought against them for matters addressed in this Consent Decree they will notify in writing the  
3 United States and the State within twenty (20) days of service of the complaint on them. In  
4 addition, Settling Defendants shall notify the United States and the State within twenty (20) days  
5 of service or receipt of any Motion for Summary Judgment and within twenty (20) days of receipt  
6 of any order from a court setting a case for trial.

7        97. In any subsequent administrative or judicial proceeding initiated by the United States or  
8 the State for injunctive relief, recovery of response costs, or other appropriate relief relating to  
9 the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based  
10 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting,  
11 or other defenses based upon any contention that the claims raised by the United States or the  
12 State in the subsequent proceeding were or should have been brought in the instant case;  
13 provided, however, that nothing in this Paragraph affects the enforceability of the covenants not  
14 to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

#### 15                    **XXIV. ACCESS TO INFORMATION**

16        98. Settling Performing Defendants shall provide to EPA and the State, upon request, copies  
17 of all documents and information within their possession or control or that of their contractors or  
18 agents relating to activities at the Site or to the implementation of this Consent Decree, including,  
19 but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,  
20 reports, sample traffic routing, correspondence, or other documents or information related to the

1 Work. Settling Performing Defendants shall also make available to EPA and the State, for  
2 purposes of investigation, information gathering, or testimony, their employees, agents, or  
3 representatives with knowledge of relevant facts concerning the performance of the Work.

4 99. a. Settling Performing Defendants may assert business confidentiality claims  
5 covering part or all of the documents or information submitted to Plaintiffs under this Consent  
6 Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA,  
7 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B. Documents or information determined  
8 to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart  
9 B. If no claim of confidentiality accompanies documents or information when they are submitted  
10 to EPA and the State, or if EPA has notified Settling Performing Defendants that the documents  
11 or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the  
12 public may be given access to such documents or information without further notice to Settling  
13 Performing Defendants.

14 b. The Settling Performing Defendants may assert that certain documents, records  
15 and other information are privileged under the attorney-client privilege or any other privilege  
16 recognized by this Court. If the Settling Performing Defendants assert such a privilege in lieu of  
17 providing documents, they shall provide the Plaintiffs with the following: (1) the title of the  
18 document, record, or information; (2) the date of the document, record, or information; (3) the  
19 name and title of the author of the document, record, or information; (4) the name and title of  
20 each addressee and recipient; (5) a description of the contents of the document, record, or  
21 information: and (6) the privilege asserted by Settling Performing Defendants. However, no



documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

100. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XXV. RETENTION OF RECORDS**

101. Until ten (10) years after the Settling Performing Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Performing Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Performing

1 Defendant (and its contractors and agents) must retain, in addition, copies of all data generated  
2 during the performance of the Work and not contained in the aforementioned documents required  
3 to be retained. Each of the above record retention requirements shall apply regardless of any  
4 corporate retention policy to the contrary.

5 102. At the conclusion of this document retention period, Settling Defendants shall notify  
6 the United States and the State at least ninety (90) days prior to the destruction of any such  
7 records or documents, and, upon request by the United States or the State, Settling Defendants  
8 shall deliver any such records or documents to EPA or the State, subject to the provisions of this  
9 Paragraph. If the United States has not responded to Settling Defendants' notice prior to the time  
10 Settling Defendants intend to destroy the records or documents, Settling Defendants shall deliver  
11 all such records and documents to EPA no earlier than ten (10) days after providing an additional  
12 written notice that such records and documents will be delivered, unless EPA provides otherwise  
13 after receiving such notice. The Settling Defendants may assert that certain documents, records  
14 and other information are privileged under the attorney-client privilege or any other privilege  
15 recognized by this Court. If the Settling Defendants assert such a privilege, they shall provide  
16 the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the  
17 date of the document, record, or information; (3) the name and title of the author of the  
18 document, record, or information; (4) the name and title of each addressee and recipient; (5) a  
19 description of the subject of the document, record, or information; and (6) the privilege asserted  
20 by Settling Defendants. However, no documents, reports, or other information created or  
21 generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds

1 that they are privileged.

2 103. Each Settling Defendant hereby certifies individually that, to the best of its knowledge  
3 and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise  
4 disposed of any records, documents, or other information (other than identical copies) relating to  
5 its potential liability regarding the Site since notification of potential liability by the United States  
6 or the State or the filing of suit against it regarding the Site and that it has fully complied with  
7 any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42  
8 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

9 **XXVI. NOTICES AND SUBMISSIONS**

10 104. Whenever, under the terms of this Consent Decree, written notice is required to be  
11 given or a report or other document is required to be sent by one Party to another, it shall be  
12 directed to the individuals at the addresses specified below, unless those individuals or their  
13 successors give notice of a change to the other Parties in writing. All notices and submissions  
14 shall be considered effective upon receipt, unless otherwise provided. Written notice as specified  
15 herein shall constitute complete satisfaction of any written notice requirement of the Consent  
16 Decree with respect to the United States, EPA, the State, and the Settling Defendants,  
17 respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ # 90-11-2-299/1

and

Andrew S. Goldman (3RC41)  
Sr. Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

As to EPA:

Christopher J. Corbett (3HS22)  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

As to the State:

Kim Lemaster  
Division Chief, Federal Superfund Division  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

As to the Settling Performing Defendants:

Thomas Ryan, Esquire  
Lathrop & Gage  
Suite 2800  
2345 Grand Boulevard  
Kansas City, MO 64108

As to the Settling Non-Performing Defendants:

Bonnie Barnett, Esquire  
Drinker Biddle  
One Logan Square  
18th and Cherry Streets  
Philadelphia, PA 19103

**XXVII. EFFECTIVE DATE**

105. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

**XXVIII. RETENTION OF JURISDICTION**

106. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

**XXIX. APPENDICES**

107. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is the OU2 ROD.

“Appendix B” is the complete list of Settling Non-Performing Defendants.

“Appendix C” is the complete list of Settling Performing Defendants.

“Appendix D” is the Draft Easement.

“Appendix E” is the summary of costs referred to in the definition of “Past Response Costs.”

“Appendix F” is the Dispute Resolution Procedure For Disputes Between the State and the Settling Performing Defendants.

**XXX. COMMUNITY RELATIONS**

108. Settling Performing Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Performing Defendants under the Plan. Settling Performing Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Settling Performing Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

**XXXI. MODIFICATION**

109. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Settling Performing Defendants. All such modifications shall be made in writing.

110. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and any other plan or submissions approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Performing Defendants. Modifications to the Work made pursuant to Paragraph 14 ("Modification of the Work") may be made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

**XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

111. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of

1 CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to  
2 withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or  
3 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.  
4 Settling Defendants consent to the entry of this Consent Decree without further notice.

5 112. If for any reason the Court should decline to approve this Consent Decree in the  
6 form presented, this agreement is voidable at the sole discretion of any Party and the terms of the  
7 agreement may not be used as evidence in any litigation between the Parties.

### 8 **XXXIII. SIGNATORIES/SERVICE**

9 113. Each undersigned representative of a Settling Defendant to this Consent Decree and  
10 the Assistant Attorney General for the Environment and Natural Resources Division of the  
11 Department of Justice certifies that he or she is fully authorized to enter into the terms and  
12 conditions of this Consent Decree and to execute and legally bind such Party to this document.

13 114. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree  
14 by this Court or to challenge any provision of this Consent Decree unless the United States has  
15 notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

16 115. Each Settling Defendant shall identify, on the attached signature page, the name,  
17 address, and telephone number of an agent who is authorized to accept service of process by mail  
18 on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.  
19 Settling Defendants hereby agree to accept service in that manner and to waive the formal service  
20 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local



1 rules of this Court, including, but not limited to, service of a summons. The parties agree that  
2 Settling Defendants need not file an answer to the complaint in this action unless or until the  
3 court expressly declines to enter this Consent Decree.

4 **XXXIV. RESERVED.**

5  
6 116. Reserved.

7 **XXXV. FINAL JUDGMENT**

8 117. This Consent Decree and its appendices constitute the final, complete, and  
9 exclusive agreement and understanding among the parties with respect to the settlement  
10 embodied in the Consent Decree. The parties acknowledge that there are no representations,  
11 agreements, or understandings relating to the settlement other than those expressly contained in  
12 this Consent Decree. Upon approval and entry of this Consent Decree by the Court, this Consent  
13 Decree shall constitute a final judgment between and among the United States and the Settling  
14 Defendants. The Court finds that there is no just reason for delay and therefore enters this  
15 judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

16 **SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.**

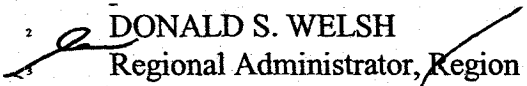
17 \_\_\_\_\_  
18 United States District Judge


1 **THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United**  
2 **States v. \_\_\_\_\_, relating to the \_\_\_\_\_ Superfund Site.**  
3  
4


5 **FOR THE UNITED STATES OF AMERICA**

6 \_\_\_\_\_  
7 **SUE ELLEN WOOLDRIDGE**  
8 Assistant Attorney General  
9 Environment and Natural Resources Division  
10 U.S. Department of Justice  
11 Washington, D.C. 20530

12 \_\_\_\_\_  
13 **NANCY FLICKINGER**  
14 Senior Attorney  
15 Environmental Enforcement Section  
16 Environment and Natural Resources Division  
17 U.S. Department of Justice  
18 Washington, D.C. 20530

1  
2  DONALD S. WELSH  
3 Regional Administrator, Region III  
4 U.S. Environmental Protection Agency  
5 1650 Arch Street  
6 Philadelphia, PA 19103  
7

8  
9 LYDIA ISALES   
10 Acting Regional Counsel  
11 U.S. Environmental Protection Agency, Region III  
12 1650 Arch Street  
13 Philadelphia, PA 19103

14  
15  ANDREW S. GOLDMAN  
16 Sr. Assistant Regional Counsel  
17 U.S. Environmental Protection Agency, Region III  
18 1650 Arch Street  
19 Philadelphia, PA 19103  
20

1 ROD J. ROSENSTEIN  
2 United States Attorney  
3 District of Maryland

4  
5 LARRY D. ADAMS (Bar No. 03118)  
6 Assistant United States Attorney  
7 Office of the United States Attorney  
8 36 S. Charles Street, 4<sup>th</sup> Floor  
9 Baltimore, MD 21201  
10 Tel: 410-209-4801  
11 Fax: 410-962-9947  
12 Email: larry.adams@usdoj.gov

**FOR THE STATE OF MARYLAND:**

**HORACIO TABLADA**

Director

Waste Management Administration


1800 Washington Boulevard

Baltimore, MD 21230

*Kane & Lombard Superfund Site-Operable Unit No. 2  
Remedial Design/Remedial Action Consent Decree*

---

**FOR CONSTELLATION POWER SOURCE GENERATION, INC.:**

[Signature] /  \_\_\_\_\_

*Please Type the Following:*

Name: John T. Long

Title: Senior Vice President - Constellation Generation Group

Suite 500, Annapolis Exchange Parkway  
Address: Annapolis, MD 21401

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: John L. Wood

Title: Resident Agent

750 E. Pratt Street, 17th Floor  
Address: Baltimore, MD 21202

Telephone: 410-783-3315

**FOR BROWNING-FERRIS, INC.:**

(  
\_\_\_\_\_  
[Signature]

*Please Type the Following:*

Name: Jo Lynn White

Title: Officer

Address: 15880 N. Greenway-Hayden Loop, Suite 100

Scottsdale, AZ 85260

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: Thomas A. Ryan

Title: Attorney

Address: Lathrop & Gage LC

2345 Grand Boulevard, Kansas City, MO 64108

Telephone: 816-292-2000

**FOR GENERAL MOTORS CORPORATION:**

\_\_\_\_\_  
[Signature]

*Please Type the Following:*

Name: Michelle T. Fisher

Title: Attorney

M.C. 482-C24-D24

Address: 300 Renaissance Center

P.O. Box 300

Detroit, MI 48265-3000

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: CT Corporation

Title: \_\_\_\_\_


300 E. Lombard St., Ste. 1400

Address: Baltimore, MD 21202

Telephone: 410-539-2838



FOR LUCENT TECHNOLOGIES, INC.:

[Signature] 

Please Type the Following:

Name: R J Femenella

Title: EMHS Vice President

Address: 600 Mountain Ave  
Murray Hill, NJ 07974

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: G. John Galasso, P.E.  
Corporate Environmental Engineer

Title: Lucent Technologies Inc.  
101 Crawford's Corner Rd., Room 1D-101E

Address: Holmdel, NJ 07733-3030

Telephone: 732-949-7928

**FOR** AK Steel Corporation, Successor-by- :  
Merger to Armco Inc.

[Signature]

*Please Type the Following:*

Name: David C. Horn

Title: Sr. VP and General Counsel

Address: 703 Curtis Street, Middletown, OH, 45043

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: John J. Kuzman, Jr., Esq.

Title: Chief Compliance Officer and Asst. Gen. Counsel  
AK Steel Corporation

Address: 703 Curtis Street, Middletown, OH, 45043

Telephone: 513-425-5224

*Kane & Lombard Superfund Site-Operable Unit No. 2  
Remedial Design/Remedial Action Consent Decree*

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FOR Beatrice Companies, Inc. :

\_\_\_\_\_  
[Signature]

*Please Type the Following:*

Name: Scott E. Messel

Title: Authorized Representative

Address: One ConAgra Drive, CC-335  
Omaha, NE 68102

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: John A. Andreasen

Title: Attorney  
McGrath, North, Mullin & Kratz, PC LLO

Address: Suite 3700, First National Tower, 1601 Dodge Street  
Omaha, NE 68102

Telephone: (402) 341-3070

FOR CANTON RAILROAD COMPANY :

[Signature] \_\_\_\_\_

*Please Type the Following:*

Name: John C. Magness

Title: President & CEO

1841 S. Newkirk Street  
Address: Baltimore, MD 21224

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: Margaret W. Tindall

Title: Attorney for Canton Railroad Company

233 E. Redwood Street  
Address: Baltimore, MD 21202

Telephone: 410.576.4145

FOR Chevron Environmental Management Company,  
for itself and on behalf of Kewanee Industries, Inc.

(Signature)

Please Type the Following:

Name: Robert R. John

Title: Business Unit Manager

Address: 6001 Bollinger Canyon Road, K-2100  
San Ramon, CA 94583

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Corporation Service Company

Title: \_\_\_\_\_

Address: 11 East Chase Street, Baltimore, MD 21202

Telephone: 800-222-2122

FOR Crown Cork and Seal Company Inc

[Signature]

Please Type the Following:

Name: MICHAEL J ROWLEY

Title: Asst GENERAL COUNSEL

Address: ONE CROWN WAY  
Phila PA 19154

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

FOR

Exxon Mobil Corporation and its subsidiaries and  
predecessors

[Signature]

Please Type the Following:

Name: Zane K. Bolen

Title: Area Manager, Superfund

Address: 16825 Northchase Dr.  
Corp - GP2-922  
Houston, TX 77060

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Stephen Porac

Title: Project Manager

Address: 1545 Rt 22 East  
Bldg CC ml 7 - Rm. 144 Annandale, NJ 08001

Telephone: 908-730-2651

FOR

[Signature]

Please Type the Following:

Name: JOHN J. MORRIS

Title: PORTFOLIO DIRECTOR

Address: HOVEYWELL INTERNATIONAL, INC.  
101 COLUMBIA RD, MORRISTOWN, NJ 07962

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: CORPORATION SERVICE COMPANY

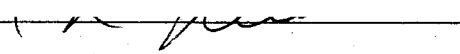
Title: 2704 COMMERCE DRIVE

Address: HARRISBURG, PA 17110

Telephone: 800-622-2300



FOR International Paper Company

[Signature] 

Please Type the Following:

Name: Edward R. Niederriter

Title: Deputy General Counsel, Vice President and Assistant Secretary

Address: 6400 Poplar Ave., Memphis TN 38197

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Kim I. Stollar

Title: Senior Counsel - EHS

Address: 6400 Poplar Ave., Memphis, TN 38197

Telephone: 901-419-4724

FOR

Mayor & City Council of Baltimore

[Signature]

Please Type the Following:

Name:

Ralph S. Tyler

Title:

City Solicitor

Address:

City Hall, 100 N. Holliday St.  
Baltimore MD 21202

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name:

Dawn S. Lettman, Assistant Solicitor

Title:

Assistant City Solicitor

Address:

Department of Law, 100 N. Holliday Street, Baltimore, MD 21202

Telephone:

(410) 396-3948

FOR

[Signature] for Millennium Holdings LLC

Please Type the Following:

Name: Deborah W. Kryak

Title: Director, Retained Liabilities and Remediation

Address: 1221 McKinney St., Houston, TX 77010

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Bonnie Allyn Barnett

Title: Attorney

Address: One Logan Sq., 18th & Cherry St., Phila., PA 19103

Telephone: 215-988-2916

WITH COPY TO:

Steven Cook, Esquire  
Lyondell Chemical Co.  
One Houston Center, Ste. 700  
1221 McKinney Street  
Houston, TX 77010

*Kane & Lombard Superfund Site-Operable Unit No. 2  
Remedial Design/Remedial Action Consent Decree*

---

FOR THE O'BRIEN CORPORATION :

[Signature] \_\_\_\_\_

*Please Type the Following:*

Name: Thomas F. Karaba

Title: Attorney for The O'Brien Corporation

Address: 20 S. Clark Street  
Suite 2310  
Chicago, IL 60603-1895

**Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

*Please Type the Following:*

Name: Thomas F. Karaba, Esq.

Title: Attorney for The O'Brien Corporation

Address: 20 S. Clark Street, Suite 2310  
Chicago, IL 60603-1895

Telephone: \_\_\_\_\_  
312-726-2468

***Kane & Lombard Superfund Site-Operable Unit No. 2  
Remedial Design/Remedial Action Consent Decree***

---

**FOR :** PORI International, Inc., a dissolved Maryland corporation, and the Liquidated Stockholders of PORI International, Inc.

**Party:** PORI International, Inc., a dissolved Maryland corporation

By :

\_\_\_\_\_  
Ernest Kovacs  
Director-Trustee

**Party:** Ernest Kovacs  
Liquidated Stockholder of PORI International, Inc.

**Party:** Kovacs Family Trust  
Liquidated Stockholder of PORI International Inc.

By:

\_\_\_\_\_  
Donna Kovacs, Trustee

**Parties:** Additional Liquidated Stockholders of PORI International, Inc.

Geza L. Kovacs  
Ursula Kovacs, Deceased  
Carl D. Clauss  
John C. Craig  
William Ginn  
Michael Togneri  
R.J. Wean, III

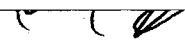
By:

\_\_\_\_\_  
Ernest Kovacs, General Manager of Kovacs Holdings, LLC,  
as Agent of all Liquidated Stockholders of PORI  
International, Inc.

**Agent Authorized to Accept Service on Behalf of Above-Signed Parties:**

Thomas L. Crowe, Esq.  
Law Offices of Thomas L. Crowe  
1622 The World Trade Center  
401 East Pratt Street  
Baltimore, MD 21202  
Email: tom.crowe@verizon.net  
Phone: 410-685-9428  
Fax: 410-685-3453

FOR SMURFIT-STONE CONTAINER ENTERPRISES, INC.

[Signature] 

Please Type the Following:

Name: Ronald J. Megna

Title: Assistant General Counsel and Assistant Secretary

Address: 150 North Michigan Ave., Chicago, IL 60601

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Ronald J. Megna

Title: Assistant General Counsel & Assistant Secretary

Address: 150 North Michigan Ave., Chicago, IL 60601

Telephone: (312) 580-4606

FOR Solo Wp Company :

[Signature] \_\_\_\_\_

D

Please Type the Following:

Name: Lisa S. Zebovitz  
Title: Counsel  
Neal, Gerber & Eisenberg LLP  
Address: Two North LaSalle Street  
Chicago, IL 60602-3801

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: Lisa S. Zebovitz  
Title: Counsel  
Neal, Gerber & Eisenberg LLP  
Address: Two North LaSalle Street  
Chicago, IL 60602-3801  
Telephone: (312) 269-8033

## **Appendix 1**

### **Browning-Ferris, Inc.**

15880 N. Greenway-Hayden Loop  
Suite 100  
Scottsdale, AZ 85260

### **Constellation Power Source Generation Inc.**

Suite 500  
750 E. Pratt Street  
Baltimore, MD 21202

### **General Motors Corp.**

300 Renaissance Center  
Detroit, MI 48265-3000

### **Lucent Technologies, Inc.**

600 Mountain Ave.  
Murray Hill, NJ  
07974-0636